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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,529	07/14/2004	Meyn Matthias	DT-6832	4470
30377	7590	08/13/2007		
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			EXAMINER KASTLER, SCOTT R	
			ART UNIT 1742	PAPER NUMBER
			MAIL DATE 08/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/501,529

Applicant(s)

MATTHIAS ET AL.

Examiner

Scott Kastler

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 25-46 is/are pending in the application.
- 4a) Of the above claim(s) 25-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/14/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

Applicant's election of claims 39-46 (Group II) in the reply filed on 6/29/2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 25-38 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/29/2007.

***Specification***

The disclosure is objected to because of the following informalities: The claims should not be referred to in the body of the specification when describing the invention, as occurs at page 8 for example.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The above claims are indefinite for the following reasons:

1. In claim 39, the term “or similar constructed means with a comparable action” renders the scope of the claims indefinite since the term “similar” is a relative term and could be construed to include any structure and the term “comparable action” is likewise indefinite and relative since any action could be “compared” to any other action regardless of the actual operation or function of the actions compared. The scope of the claims therefor would be unascertainable and indefinite to one of ordinary skill in the art at the time the invention was made. For examination purposes, the term “annular slot nozzle” was interpreted to mean any nozzle or injector means annularly situated around the oxygen injector.

2. Claim 40 recites “A method according to claim 39” however, claim 39 is an apparatus not a method claim. This claim is therefore indefinite in that it is not whether a method or an apparatus is intended to be claimed, thereby rendering the scope of the claim unascertainable. For examination purposes, claim 40 was interpreted to be an apparatus claim, since it depends upon apparatus claim 39, and contains no method steps.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 39, 41 and 46 are rejected under 35 U.S.C. 102(a) as being anticipated by either of Mahoney et al or Anderson et al. Both of Mahoney et al and Anderson et al teach an injection device (fig. 3 of Mahoney et al or fig. 3 of Anderson et al for example) including “modular

Art Unit: 1742

construction” (which means only that the structure is not integral, but is made of separate pieces attached together) of subassemblies including an oxygen injector (2 of Mahoney et al or 2 of Anderson et al for example) including inner wall and Laval nozzle assemblies (see col. 2 lines 36-38 of Mahoney et al or col. 4 lines 30-35 of Anderson et al for example) surrounded by a hot gas union and “annular slot nozzle” structure (10 of Mahoney et al or 10 of Anderson et al for example) with a common hot gas sleeve (8 of Mahoney et al or 7 of Anderson et al for example), thereby showing all aspects of the above claims.

Claims 39, 41, 43, 44 and 46 are rejected under 35 U.S.C. 102(a) as being anticipated by Shiver’086. Shiver’086 teaches an injection device (10) including “modular construction” (which means only that the structure is not integral, but is made of separate pieces attached together) of subassemblies including an oxygen injector including inner wall and Laval nozzle assemblies (see col. 2 line 52 to col. 3 line 3 for example) surrounded by a hot gas union and “annular slot nozzle” structure (172 or 174 for example) with a common hot gas sleeve (124 for example), as well as coaxial additive injector means within the oxygen injector (41) thereby showing all aspects of the above claims.

Claims 39-41 and 46 are rejected under 35 U.S.C. 102(a) as being anticipated by Wagener et al. Wagener et al teaches an injection device (figure 2 for example) including “modular construction” (which means only that the structure is not integral, but is made of separate pieces attached together) of subassemblies including an oxygen injector (12 for example) including inner wall and Laval nozzle assemblies surrounded by a hot gas union and “annular slot nozzle” structure (19 for example) with a common hot gas sleeve (17 for example),

Art Unit: 1742

where the oxygen injector is axially displaceable, thereby showing all aspects of the above claims.

***Allowable Subject Matter***

Claims 42 and 45 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (571) 272-1243. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1742

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Scott Kastler  
Primary Examiner  
Art Unit 1742

sk